

Significant concerns with the proposed World Bank safeguards for indigenous peoples

We have reviewed and considered the advance copy of the new proposed draft World Bank Environmental and Social safeguards (ESP and ESS). We are deeply dismayed by the overall weakening of the policy requirements for indigenous peoples with very serious implications including outright denial of the existence and rights of indigenous peoples under international human rights laws.

Not only are the standards for indigenous peoples (contained in ESS7) still below internationally accepted practice and international human rights law, but further it appears that even the standards in ESS7 will only apply to a minority of projects impacting on indigenous peoples and financed by the World Bank. It is imperative in our view that activities funded by the World Bank, either directly or through financial intermediaries, must be required to meet the same established standards for indigenous peoples. It is simply unacceptable that the implementation of policy requirements for indigenous peoples could be subject for an 'opt-out', or that borrowers can use borrower system or national laws that are not aligned to the recognition of the rights of indigenous peoples under international human rights instruments.

It is urgent that the following issues be taken into consideration and effectively responded to:

1. Policy requirements to protect the rights of indigenous peoples must be universally applied to all Bank-financed activities impacting on indigenous peoples

1.1. Immediately remove the proposal that governments can simply 'opt-out' of applying the policy requirements intended to protect indigenous peoples (ESS7)

According to the draft, the Bank is proposing that borrowers (mainly but not exclusively governments) can request that they not apply Environmental and Social Standard 7 on Indigenous Peoples. Borrowers may request this if they consider that identifying indigenous peoples would, in some way, heighten ethnic tensions or increase conflict, or if recognizing culturally distinct groups is contrary to their national constitutions.¹ This directly and seriously undermines the specific and fundamental rights that indigenous peoples have over their lives, their lands and resources and the course of their own development, as already enshrined in international human rights law.

¹ ESS7, paragraph 9.

Encroachment on the lands, resources and territories of indigenous peoples is often undertaken with the implicit or explicit consent of the governments whose decisions often adversely impact on indigenous peoples occupying such lands. Indeed, international legal standards protecting the rights of indigenous peoples exist in part due to the wilful actions of governments in the past to discriminate against, disenfranchise and alienate indigenous peoples from their lands and resources. If the decision on whether international human rights are to be respected or not rests solely with national governments, then the Bank is acting to undermine agreed international human rights standards, protected by UN and regional human rights instruments.

1.2. Need to improve respect for land rights as part of protecting the rights of indigenous peoples in ESS7

The land rights of indigenous peoples have been recognized again and again under international and regional human rights law as fundamental to the very survival of the peoples themselves. Given the importance of this set of rights, it is critical that requirements intended to ensure such rights are protected are clearly formulated. As such, the required 'plan for legal recognition of ... perpetual or long-term renewable custodial or use rights' must be developed in partnership with the peoples themselves, time-bound, designed against clear indicators and with sufficient budget allowances.

1.3. Inadequate Free, Prior and Informed Consent requirements in ESS7

The inclusion of a requirement for obtaining the free, prior and informed consent is welcomed, but the formulation of such a requirement is of fundamental importance in ensuring that the requirement achieves the objective of ensuring indigenous peoples can exercise their right to self-determination and are full partners in the development process. The formulation currently proposed in paragraphs 18 and 19 fails to achieve this, and the following important amendments are, at a minimum, required:

1.3.1 Agreements reached with communities must be described and verified by the Bank together with independent experts, including time-bound actions necessary to ensure that agreements are met and clear budget allocations to agreed actions.

1.3.2 In any case of violation or non-compliance with agreements reached with communities or in cases of violation of the policy requirements in ESS7 there must be a clear and accessible grievance mechanism that affected communities and peoples can access to redress, including but not limited to direct access to the Inspection Panel. Technical support for use of grievance mechanisms and/or the Inspection Panel must be available on request.

1.3.3 Disclosure of information must be required to be in a language and in forms, which are appropriate to the affected communities and able to be fully understood.

1.3.4 The involvement of indigenous peoples representative bodies and organisations must specifically include women and other community members in addition to councils of elders, village councils or chieftains (already mentioned).

1.3.5 Respect for the decision-making processes of indigenous peoples should be mandatory (not 'where applicable'), must ensure respect for independent, and must ensure that decision-making processes are free from intimidation, manipulation and any form of undue pressure.

1.4. The use of 'borrower systems' or national laws allows the ESS requirements to be set aside, without any clear process for determining adequacy.²

The new proposals allow borrowers to follow national laws where they 'materially meet' the objectives of the standards. This implies a capacity within the Bank to assess not only all relevant national laws and systems but also historical practice against such laws and policies. However, as pointed out by Bank Vice President comments, how such an assessment would be carried out, when and with what budget is unclear.³

For ESS7 and requirements for indigenous peoples in particular, this means in effect that national governments can again elect not to apply the requirements for indigenous peoples as established in ESS7 without any recourse available to the affected peoples themselves. Under existing policy as described in OP4.00, the "equivalence" of national laws and processes against Bank safeguards is determined on a policy by policy basis and that "before deciding on the use of borrower systems, the Bank also assesses the acceptability of the Borrower's implementation practices, track record and capacity".⁴ This does not appear in the new proposals, which also do not allow for indigenous peoples' inputs into any assessment done nor the decision to set aside the requirements of ESS7 that could result.

Further, there are no specific requirements in assessment of laws relating to the rights and interests of indigenous peoples in particular. Any assessment of such a set of national laws – proposed to be used in replacement of ESS7 – must include assessment of the extent to which a national legal framework for protection of indigenous peoples aligns with international human rights standards and law. This fails to appear in the proposed policy requirements.

1.5. Further loopholes allow borrowers to circumvent requirements

² This in clear contrast to the Asian Development Bank which has an entire policy dedicated to ensuring that use of country systems both strengthens domestic capacities in environmental and social impact assessment and management, and complies with ADB standards.

³ WB VP Memos, May 2014

⁴ OP4.00

In addition to the loop-holes and opt-outs already described which undermine the content of ESS7 as a standard for Bank-financed activities impacting on indigenous peoples, there are further policy dilutions which mean borrowers can avoid applying ESS7. Critical in this is that the proposed ESS apply ONLY to investment lending, and not to the two other main lending instruments that the Bank has, Programme for Results and Development Policy Loans. Given that (at current levels) half of all Bank funding is channelled through instruments other than Investment Lending, these standards provide no consistency for indigenous peoples impacted by Bank-financed activities.

Furthermore, projects funded by financial intermediaries also need not comply with the environmental and social standards for any sub-project except those of the highest risk category, meaning that the requirements of ESS7 will not be applied to the majority of sub-projects financed through financial intermediaries.⁵ Such exclusions are not acceptable as they create discriminatory provisions depending on financial instrument used, and undermine the very concept of universal standards on which environmental and social standards are predicated.

2. Focus on self-reporting and reliance on borrowers to meet standards without appropriate improvements in monitoring skills or requirements

Moving now to broader concerns with the ESS system as a whole, the World Bank's new commitment to paying attention to implementation is certainly welcome. The Bank to date has a very poor track record in monitoring and supervising the implementation of its projects throughout the project cycle. This has been amply documented by the Bank's own OED/IEG evaluation reports over the past 20 years, and specifically highlighted in the internal desk review of projects applying OP4.10 on indigenous peoples.

It is not clear how World Bank monitoring will be improved to meet these new responsibilities. For ESS7 World Bank monitoring must be attached to key indicators, involve independent experts and linked to clear, known and enforceable sanctions for failure to comply with requirements, including suspension of funds and compensation for harms suffered. The World Bank has an independent Indigenous Peoples' Advisory Body that should play an important role in monitoring compliance with the established standards for indigenous peoples.

3. Inspection Panel role is unclear and made more difficult

The role and mandate of the Inspection Panel comes into question with the new structure, where requirements for the Bank are largely limited to due diligence and monitoring contained in the proposed World Bank Environment and Social Policy. In the various instances where the ESS are proposed not to apply (for instance where national frameworks are to be applied, or where a financial intermediary is

⁵ ESS1, paragraph 29.

implementing projects with moderate or lower risk category), the role of the Inspection Panel is again unclear.

The new proposed Environment and Social Policy also adopts a large number of phrases that serve to dilute and obfuscate hard commitments or requirements against which the Bank can be held accountable. Phrases such as 'in a timeframe acceptable to the Bank', 'where applicable', 'where financially feasible', 'materially consistent with objectives', 'may' rather than 'shall', all serve to weaken the actual standards against which borrowers are expected to act and to be held accountable, and make the task of the Inspection Panel difficult if not impossible.

4. Failure to incorporate meaningful standards on land tenure governance and failure to apply ESS5 requirements to land titling or land administration projects

Despite commitments received from the President of the World Bank during the consultation period, the new standards on land (incorporated into ESS5 and joining existing standards on involuntary resettlement) do not adhere to the standards already existing in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries. In particular the requirements of ESS5 do not provide sufficient protection from the real (and increasing) threats of large-scale land-grabbing for industrial agriculture specifically mentioned in the Voluntary Guidelines. Further, the exclusion list included in ESS5 (for activities NOT covered by the policy) represents a significant narrowing of the scope of the existing Involuntary Resettlement policy of the World Bank. By excluding land titling and land regularization processes, the Bank risks excluding large scale and long-term impacts of resettlement from the policy designed specifically to address such impacts.

5. Critical information missing from the draft

There are significant gaps in the information being provided for CODE to review. The proposed document for public consultation does not include an implementation plan, any budget references or commitments, no staff skills discussion to account for the changing roles of Banks staff envisioned in the new proposals, and no plan for roll-out of the policy through staff training. It also does not contain any detail about the reforms of staff incentives and safeguard implementation procedures that are required to drastically improve the track record the Bank has on meeting its social and environmental commitments. It is our view that CODE must request the Bank to provide a costed, planned and clear implementation process for the new proposed standards as assessing these in the absence of Bank commitments to appropriately implement them is impossible.

INDIGENOUS PEOPLES ORGANIZATIONS AND INSTITUTIONS

#	REGION	COUNTRY	ORGANIZATION
1	Global		Indigenous Peoples Movement for Self Determination and Liberation (IPMSDL)
2	Africa		Fondation Batwa
3		Kenya	Indigenous Information Network-Kenya
4	Arctic		Saami Council
5	Asia	Bangladesh	Bangladesh Indigenous Peoples Forum
6			Kapaeeng Foundation
7			Maleya Foundation
8		Cambodia	Cambodia Indigenous Youth Association (CIYA)
9		India	Civil Society Women Organization(CSWO)
10			Borok Peoples Human Rights Organization (BPHRO) & Borok Inter Tribal Peoples Development Centre (BITPDC)
11			Adivasi Navjeevan Gathan Navjyoti Agua (ANGNA)
12			Naga Peoples Movement for Human Rights (NPMHR)
13			Karbi Human Rights Watch (KHRW)
14			Indonesia
15		Dewan Adat Papua	
16		Myanmar	Chin Human Rights Organization (CHRO)
17			Kachin Peace Network
18		Nepal	Nepal Federation of Indigenous Nationalities (NEFIN)
19			Youth Federation of Indigenous Nationalities (YFIN)
20			Nepal Kirat Kulung Bhasa Sanskriti Utthan Sangh
21			Lawyers' Association for Human Rights of Indigenous Peoples (LAHURNIP)
22			Indigenous Women League Nepal (IWL Nepal)
23		Philippines	Cordillera Peoples Alliance
24		Taiwan/China	TARA-Ping Pu
25	Thailand	Indigenous Peoples Foundation for Education and Environment (IPF)	
26		Indigenous Knowledge and Peoples Network Mainland Montane Southeast Asia (IKAP)	
27	Timor Leste	Centro Juventude Covalima (Covalima Youth	

		Centre)
28	Vietnam	Center for Sustainable Development in Mountainous Areas (CSDM)
29		Vietnam Indigenous Knowledge network – VTIK

SUPPORT GROUPS

#	REGION/COUNTRY	ORGANIZATION
1	Regional/Asia	Diakonia Asia
2	Bangladesh	Coastal Livelihoods and Environmental Action Network (CLEAN)
3		Bangladesh NGOs Network for Radio and Communication (BNNRC)
4	Canada	Social Justice Connection
5	India	Centre for Research and Advocacy, Manipur
6		Citizens Concern for Dams and Development
7		Committee on the Protection of Natural Resources in Manipur
8	Japan	Japan Tropical Forest Action Network(JATAN)
9		Friends of the Earth Japan
10		Shimin Gaikou Centre
11	Kenya	Jamaa Resource Initiatives
12	Malaysia	Center for Orang Asli Concerns
13	Mongolia	OT Watch
14		Gobi Soil
15		Steps without Border
16		Centre for Human Rights and Development
17		Mongolia Nomadic Herders' Movement
18	Myanmar	Spectrum-Sustainable Development Knowledge Network
19		Land Core Group Myanmar
20	Netherlands	Both ENDS
21	Norway	Rainforest Foundation Norway (RFN)
22	Rwanda	Human Rights First Rwanda Association
23	Spain	ALMACIGA
24	UK	Human Rights Ambassador for Salem-News.com
25		Philippine Indigenous Peoples Links (PIPLinks)
26	US	Center for International Environmental Law
27		Inclusive Development International
28		Bank Information Center (BIC)
29	Vietnam	Centre of Research & Development in Upland Area (CERDA)

INDIVIDUALS

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